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17 Dec. 2003 ENTERED  
by express Office of Proceedings

DEC 18 2003

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209680

Hon. Vernon Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

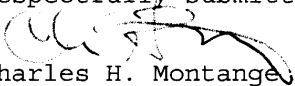
Re: City of Lincoln -- Petition for a  
Declaratory Order, F.D. 34425

Dear Mr. Williams:

On December 15, 2003, City of Lincoln filed a motion for an order permitting entry and to require production of documents in connection with Lincoln Lumber Company. Based in large part on LLC's letter to this Board dated December 15, and as further described in the enclosed pleading, City withdraws its motion for an order permitting entry and requests that its motion aimed at production of documents be held in abeyance.

Enclosed for filing is the original and copies of the City's Withdrawal of Motion for an Order Permitting Entry, et al.

Respectfully submitted,

  
Charles H. Montange  
for City of Lincoln

Encls.

cc. Thomas McFarland, Esq. (for LLC) (w/encl.)  
Joel Pedersen, Esq. (City of Lincoln) (w/encl.)

209680

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket 34425

CITY OF LINCOLN

PETITION FOR A DECLARATORY ORDER

CITY OF LINCOLN'S  
WITHDRAWAL OF  
MOTION FOR AN ORDER PERMITTING ENTRY  
AND  
CITY'S FURTHER REQUEST THAT MOTION  
FOR AN ORDER REQUIRING PRODUCTION  
BE HELD IN ABEYANCE



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I.

In response to Lincoln Lumber Company's (LLC's) refusal to allow entry as sought by City of Lincoln pursuant to 49 C.F.R. § 1114.30, City of Lincoln on December 15 moved for an order to permit entry, and for an order to ensure timely production of documents. In a letter dated December 15, received by City of Lincoln on December 16, LLC's counsel advised that LLC would now permit the entry sought by the City.<sup>1</sup> By a separate faxed letter received by City later on December

<sup>1</sup> In its letter dated December 15 filed with this Board, LLC states that it will permit entry on December 19, 2003. LLC further states that it requires three days to clear certain areas of stacked lumber and building materials. It should be noted that City of Lincoln has not sought the "clearance" of any material from any portion of the right of way, and does not believe any such clearance is required for the inspection the City anticipates. City of Lincoln has requested that LLC not cover the frogs on the tracks, for City does wish to measure distances involving the frogs.

16, LLC's counsel advised that LLC still wished additional liability releases as a condition for entry. Since City has provided an indemnity as part of City's Request to Permit Entry served November 24, City inquired of LLC what more it required. By faxed memorandum received December 17, LLC's counsel indicates that LLC is satisfied with the indemnity set forth in the Request to Permit Entry served November 24.

Since LLC now states that it will permit entry as requested, City of Lincoln hereby withdraws its motion for an order to permit entry.

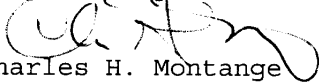
## II.

In its letter dated December 15, LLC represents that it will "respond in good faith" to the City's document request on the due date of December 30, 2003. LLC claims that the filing of a motion for an order prior to the due date is "professionally insulting." Since LLC had previously advised the City that there was nothing in the Board's Rules in 49 C.F.R. §1114.30 that required a response to requests for matters such as entry or documents unless the Board ordered a response, and since LLC initially refused entry absent an order based on its view that entry and document production were voluntary under § 1114.30 absent an STB order, it is hardly "professionally insulting" for the City to seek an order to obtain discovery responses from LLC by December 30 for a Rebuttal by the City due January 8.

In light of the representation of LLC's counsel that LLC

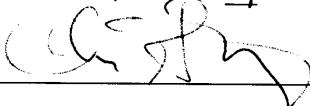
now will make a good faith document response on December 30, 2003, City of Lincoln requests that City's motion for an order requiring production of documents on that date be held in abeyance until January 2, 2004. After examining the good faith response promised by LLC's counsel, City either will withdraw its motion on or by that date, or will modify or renew it as otherwise appropriate.

Respectfully submitted,

  
Charles H. Montange  
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Seattle, WA 98177  
(206) 546-1936  
for City of Lincoln

Certificate of Service

I hereby certify service of the foregoing by Express Delivery (next business day) upon Thomas McFarland, Esq. (counsel for Lincoln Lumber Company), 208 South LaSalle St., Suite 1890, Chicago, IL 60604-1112, this 17th day of December, 2003.

  
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